



United States Department of State

Washington, D.C. 20520

OCA FILE

*Leg/Allen*  
*OGA*

August 15, 1989

MEMORANDUM

TO: Distribution List

FROM: CA/PC - Marilyn R. Povenmire *MRP*

SUBJECT: Attached Decision Memorandum on Hong Kong FSNs

Please review the attached draft on 1997 and Hong Kong FSNs. Many of you cleared on the earlier draft which, however, required revision to accommodate some concerns of EAP. In this proposal, we provide now some special procedures for Hong Kong FSNs with twenty years' service, and we offer similar benefits beginning in 1996 for Hong Kong FSNs with fifteen years' service. These are simply administrative actions, however, and their political/precedential impact should be minimal.

Regarding a proposal to allow FSNs with green cards (U.S. legal permanent residents) to return to work at our missions abroad, this is a matter which needs to be worked out with INS, and which may require legislation. PER/FSN will take up this issue and its possible applicability worldwide.

Please provide your clearance/comments to me by COB Thursday, August 17.

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8/15/89:0057t:X75366

TO: M - Mr. Ivan Selin  
FROM: CA - Joan M. Clark  
SUBJECT: FSN Staffing at ConGen Hong Kong

ISSUE FOR DECISION

Whether to accord preferred "special immigrant" ("SI") treatment to FSN personnel at ConGen Hong Kong.

ESSENTIAL FACTORS

A. Background.

Because of the widespread fear and uncertainty in Hong Kong ("HK") about the Colony's impending subjugation to PRC sovereignty in 1997, major public and private institutions in HK -- including our Consulate General -- face difficult challenges in attracting and retaining qualified local staff. Recent events in the PRC have aggravated this anxiety by eroding the credibility of PRC commitments to maintain HK as an open, free-market society.

These fears have precipitated a "brain drain" from HK and have set off a bidding war for qualified local employees. Our Consulate believes that the Department must act promptly "to provide reassurances that will induce our FSN staff to stay...for the long haul," and that failure to do so could impair important U.S. management and foreign policy objectives in the Colony. See Tab 2. The post has offered three specific recommendations for consideration by the Department: (i) permit FSN's holding immigrant visas to continue working in the Consulate; (ii) declare the situation in HK as an "exceptional circumstance" for SI purposes; (iii) grant SI status to FSN's with less than fifteen years service. For the following reasons, we oppose post's third proposal at this time, but support somewhat modified versions of the first and second proposal.

## B. Analysis of Options.

The Department can address the recruiting and retention problems that post has identified through administrative or legislative means, or by a combination of both.

### 1. Administrative.

Section 101(a)(27)(D) of the Immigration and Nationality Act ("INA") permits the Secretary of State to confer SI status upon current and former alien U.S. employees (and their immediate families) as a reward for long-term, faithful service, under specified conditions -- including a minimum of fifteen years' service. In addition, Department regulations require a showing of "exceptional circumstances" and that the FSN have an intent to emigrate immediately to the U.S. See Notes to 22 C.F.R. 42.25 (9 FAM). The Department approves roughly one thousand SI applications each year for alien federal employees and their families. In practice, approval of SI status for employees with over twenty years' service is virtually automatic; approval after less than twenty years' service typically requires a showing of "special circumstances."

One of the Consulate's principal concerns is that, given the impending takeover of HK by the PRC, its loss of experienced FSN's will accelerate as 1997 approaches and as more FSN's become eligible to apply for SI status due to the passage of time. This situation reflects a longstanding Department policy -- most recently reaffirmed in 1985 -- that the "intent to emigrate" requirement is an absolute prerequisite to approval of SI status. See Tab 3. This policy effectively compels FSN's who might otherwise prefer to continue working for the U.S. at the foreign post to quit their jobs and move to the U.S. when their SI applications are approved. The problem is aggravated for those FSN's with more than fifteen, but less than twenty years' service by the Department's strict application of the "exceptional circumstances" criterion. There are three ways to address the problem administratively.

First, the Department may, by administrative fiat, dispense with the current policy requirement that SI candidates in HK demonstrate an intent immediately to emigrate to the U.S. upon approval of their SI applications. Under this option, the Department would conditionally approve the SI application (thereby provisionally "guaranteeing" the applicant that he will be able to emigrate to the U.S. at some later date, contingent only upon continued faithful service), but would suspend final action until the FSN actually decides to terminate his employment and to assume permanent resident status in the U.S. Significantly, the Department may take this action without regard to the INS, and to do so would presumably assuage the anxieties of the Consulate's more senior FSN personnel. This option is a modified version of post's first recommendation.

Second, to strengthen and complement the first option, the Department could also without INS approval administratively conclude that "exceptional circumstances" exist in HK, thereby signaling to our FSN employees in the Colony that they would be able to qualify for SI status after fifteen years of faithful service, rather than the usual twenty. Although this is one of the options that post supports, it could, unless coupled with other administrative safeguards like that described above, actually accelerate the loss of experienced FSN personnel by inducing them to leave post's service five years earlier than they might have under the existing criteria.

Third, the Department could seek to persuade INS to establish a special procedure that would enable FSN's with approved SI status to emigrate to the U.S. in order to establish legal permanent residence, but permit them to return to HK for continued employment at post. This option, which is similar to one proposed by post, and which has several possible variations, would require INS acquiescence and raises certain legal problems relating to permanent resident status. To avoid legal problems it might be necessary to seek legislation.

## 2. Legislative.

More radical options -- e.g., granting of SI status to FSN's with less than fifteen years' employment; creation of a new SI category only for HK employees; issuance of U.S. passports to HK FSN employees (as the French have recently done for Hong Kong employees of French entities) -- raise serious legal and policy issues and would require legislation.

### C. Rationale for Recommendation.

Although the Consulate has identified a potentially serious personnel management issue, we do not believe that the available evidence proves a case for radical action at this juncture. Rather, we believe that the situation calls for a flexible, incremental approach, the initial steps of which may be achieved entirely within the scope of the Department's administrative resources. In particular, we believe that radical legislative action would be grossly premature under the circumstances.

We do not believe that the situation at this time warrants a blanket determination by the Department that "exceptional circumstances" exist in HK sufficient to justify the granting of SI status to FSN employees with less than twenty years' service. By 1996, however, we propose that fifteen years' service should satisfy the definition of "exceptional circumstances." Whether we should press INS to reverse its position on the obligation to maintain permanent residence in the U.S. is an issue which requires further study, especially if legislation is required. We will want to consider whether this benefit should apply world wide, not just to Hong Kong's FSNs.

Even under our limited option, however, we would continue to monitor developments in HK situation with care, and would do the necessary contingency planning with INS and Congress to pave the way for prompt action should the situation in HK degrade precipitously or should our personnel losses continue to increase beyond acceptable limits.

There are only three apparent drawbacks to our proposed approach. First, while it may help with the retention problem, it will clearly do little to stimulate recruitment. Second, like all half measures, the proposal may suffer from the vice that it does not go far enough to satisfy the concerns of our FSN's -- at least some of whom may, after the requisite years' faithful service, conclude that the benefits of immediate emigration to the U.S. outweigh the hypothetical value of conditional SI status. Third, regardless of any gloss that the Department might put on such a plan, it will be widely viewed as precedential by our FSN's in other problematic areas of the world (e.g., Beirut, Burma, Panama) who may demand similar treatment on equitable grounds. We do not believe, however, that these potential difficulties are, either alone or in combination, significant enough to dissuade us from proceeding as we have proposed.

#### Recommendation

That, as an interim measure, you authorize relaxation of the Department's current "immediate intent to emigrate" policy and institute conditional approval of SI status for HK FSN employees who have served faithfully for at least twenty years. As of 1996, extend this benefit to those with at least fifteen years' service. This will provide incentive for those who could emigrate now or in the coming years to remain in Hong Kong, and induce those who will have fifteen years' service completed in 1996 and later to stay on the job to reap this benefit. (If you approve this option, we would transmit to ConGen HK the cable that appears at Tab 1.)

Approve \_\_\_\_\_

Disapprove \_\_\_\_\_

#### Attachments:

Tab 1 - Draft cable to HK

Tab 2 - HK 10873

Tab 3 - 85 State 342874

CA/PC:MRPovenmire:L/CA:JHergen:epo  
Wang #2755C:X75366:7/21/89

Clearances: CA:RJRyan  
VO:JOgden  
P:JStroatz  
D:MKennedy  
DG:LPeters  
EAP:BEuser  
H:PDoherty  
L:AKreczko  
NEA:  
ARA:EScassa  
EUR:HPerlow



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CA/VO/L/A:HEODOM: 8611D/0058T  
 7/20/89 EXT. 3-1187  
 M:ISELIN

CA/VO:JCOGDEN	CA/VO/L:SFISCHEL	CA:JMCLARK
EAP:RSOLOMON	CA/EX:KHERBERT	EAP/CM:BEUSER
L/CA:AKRECZKO	P/JSTROTZ	PER/FSN:MFTRETOLA
INS/CO:CLECHNER	EAP/EX:POLMON	S/S:JELAKE

PRIORITY HONG KONG

PRIORITY BEIJING

HONG KONG FOR CON GEN ANDERSON FROM UNDERSECRETARY SELIN  
 VISAS

N/A

CVIS, APER, AMGT, HK

1997 AND FSN STAFF RETENTION

REF: A) STATE 229422 B) HONG KONG 10073

1. AS I MENTIONED IN REFTEL (A) REPRESENTATIVES OF MANY OFFICES WITHIN THE DEPARTMENT MET TWICE RECENTLY TO DISCUSS YOUR PROPOSALS FOR ASSISTING THE FSN EMPLOYEES IN HONG KONG TO OVERCOME THEIR CONCERNS FOR THE FUTURE BY TAKING ACTION NOW TO ASSURE THEM ENTRY INTO THE UNITED STATES. REPRESENTATIVES AT THE MEETINGS INCLUDED THOSE FROM CA, EAP, PER/FSN, L AND INS. ALL AGREED THAT YOUR EMPLOYEES PERCEIVE THEY ARE FACING THE PROSPECT OF REAL DANGER TO THEMSELVES AND THEIR FAMILIES. ALL ALSO AGREED THAT SOMETHING MUST BE DONE TO ASSUAGE THOSE FEARS, BOTH FOR THE EMPLOYEES SAKE AND FOR THE SAKE OF THE CONTINUED OPERATION OF THE CONSULATE GENERAL. I PERSONALLY SHARE THIS CONCERN FOR YOUR FSNS AND FOR THE MAINTENANCE OF THE EXCELLENT PERFORMANCE WHICH CHARACTERIZES OPERATIONS IN HONG KONG.

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2. PARTICIPANTS AT THE MEETING DISCUSSED THE PROS AND CONS OF YOUR SPECIFIC SUGGESTIONS CONTAINED IN PARAGRAPH 10 OF REFTEL (B). THOSE SUGGESTIONS INVOLVE SOME ALTERNATIVES WHICH CONTRADICT CURRENT REGULATION AND POLICY, OR IN THE CASE OF THE SUGGESTION TO PERMIT EMPLOYEES WITH LESS THAN FIFTEEN YEARS OF SERVICE TO OBTAIN SIVS, HAVE NO BASIS IN LAW.

3. NEVERTHELESS, SUGGESTION (A), IN PART, MAY BE ACCEPTABLE UNDER CURRENT REGULATIONS. FOR THOSE EMPLOYEES WHO QUALIFY FOR SIV STATUS UNDER EXISTING RULES, OR WHO WILL QUALIFY BEFORE 1997, THEIR CASES COULD BE SUBMITTED FOR APPROVAL TO THE DEPARTMENT AT THE TIME THEY QUALIFY. IF, UPON RECEIPT OF THE DEPARTMENT'S APPROVAL, AN EMPLOYEE CHOSE TO REMAIN EMPLOYED AT THE CONSULATE GENERAL, HE OR SHE COULD DO SO IN THE KNOWLEDGE THAT THE APPLICATION HAD BEEN APPROVED AND THAT ONLY A PRO FORMA RE-CHECK WOULD BE REQUIRED PRIOR TO FUTURE VISA ISSUANCE. IN THOSE CASES THE DEPARTMENT WOULD AGREE, UNDER THE CIRCUMSTANCES, TO RETAIN FILES INDEFINITELY SO THAT A SIMPLE CABLE PROCEDURE COULD BE UTILIZED TO RE-APPROVE THE PREVIOUSLY APPROVED CASE. HOWEVER, THE DEPARTMENT, UNFORTUNATELY, CANNOT AGREE AT THIS TIME TO THE ISSUANCE OF A VISA TO AN INDIVIDUAL WHO INTENDS TO CONTINUE HIS OR HER EMPLOYMENT AT THE CONSULATE GENERAL INDEFINITELY.

4. WITH REGARD TO SUGGESTION (B) AND NOTWITHSTANDING THE FSN'S PERCEPTION OF THE FUTURE CONSEQUENCES TO THEM OF HAVING BEEN EMPLOYED BY THE USG, IT IS THE DEPARTMENT'S BELIEF THAT A DECLARATION OF "SPECIAL CIRCUMSTANCES" AT THIS TIME WOULD BE PREMATURE. ALL OFFICES IN ATTENDANCE AT THE MEETING TO DISCUSS THIS TOPIC WERE IN AGREEMENT THAT ACTION TO GIVE AN UNCONDITIONAL GUARANTEE OF REFUGEE, SIV OR OTHER STATUS NOW, A FULL EIGHT YEARS BEFORE THE TRANSITION, WAS UNWARRANTED. IN ANY EVENT, IF MATTERS DO TAKE A TURN FOR THE WORSE, IT IS THE DEPARTMENT'S VIEW THAT IT IS THOSE EMPLOYEES WHO REMAIN WITH US THROUGH THAT PERIOD, RATHER THAN THOSE WHO TAKE THE EARLIEST OPPORTUNITY TO DEPART, WHO SHOULD BE REWARDED WITH SIV OR SOME OTHER STATUS. HOWEVER, RECOGNIZING THAT, JUST AS OUR FSNS FEAR, SOMETHING UNEXPECTED COULD HAPPEN, THE DEPARTMENT PARTICIPANTS AGREED THAT "SPECIAL CIRCUMSTANCES" WOULD APPLY TO THOSE FSN'S WHO, BY 1996, HAVE REMAINED IN THE CONSULATE'S EMPLOY FOR FIFTEEN YEARS OR MORE. THE PROCEDURES DESCRIBED ABOVE IN PARAGRAPH (3) WOULD THEN APPLY TO THAT GROUP.

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5. THE INS/CO REPRESENTATIVE HAS INFORMED US THAT ACTIONS WHICH THAT AGENCY MIGHT INITIATE, E.G. PAROLE OR REFUGEE STATUS WOULD BE PREMATURE AT THIS TIME. FURTHER, RETURN TO EMPLOYMENT AT THE CONSULATE AFTER SECURING A GREEN CARD IN THE U.S. IS CLEARLY NOT CONTEMPLATED BY THE CURRENT LAW AS IT RELATES TO "THE INTENT TO IMMIGRATE" AND, AS THE DEPARTMENT HAS OFTEN STATED, CLEARLY PLACES IN JEOPARDY THE IMMIGRANT STATUS OF ANY EMPLOYEE WHO ENGAGES IN SUCH EMPLOYMENT. THEREFORE, INS COULD NOT AUTHORIZE A PROGRAM FOR SIV HOLDERS WHEREBY THEY OBTAIN IMMIGRANT STATUS AND THEN RETURN IMMEDIATELY TO THEIR FORMER JOBS.

6. THE PARTICIPANTS AT BOTH MEETINGS ALSO CONSIDERED THE POSSIBILITIES FOR LEGISLATIVE ASSISTANCE. DIRECT LEGISLATIVE RELIEF FOR A SELECT GROUP OF FSN EMPLOYEES WOULD BE AN UNUSUAL AND PRECEDENT SETTING SOLUTION TO THE CURRENT SITUATION. IN VIEW OF THE DIFFICULTIES FACED BY HUNDREDS OF OTHER FSN EMPLOYEES WORLDWIDE IN TERMS OF THE PERILS INHERENT IN THEIR EMPLOYMENT WITH US, THE PARTICIPANTS RELUCTANTLY CONCLUDED THAT, UNLESS THE SITUATION IN HONG KONG DETERIORATES EXTENSIVELY, BY COMPARISON WITH THEIR COLLEAGUES WORLDWIDE, LITTLE RATIONAL EXISTS FOR CREATING SPECIAL LEGISLATION FOR OUR EMPLOYEES THERE. HOWEVER, ONE SUGGESTION WHICH WILL BE EXPLORED IS GENERAL LEGISLATION COVERING ALL FSNS TO PROVIDE ASSISTANCE OR EVACUATION, SPECIAL STATUS OR OTHER APPROPRIATE RELIEF IN CASES WHERE THEY ARE PLACED IN JEOPARDY AS THE RESULT OF POLITICAL STRIFE. SUCH LEGISLATION HAS OFTEN BEEN CONSIDERED, AT LEAST INFORMALLY, WHEN FOR ONE REASON OR ANOTHER, FSNS ARE SUBJECTED TO DANGER BECAUSE OF THE LACK OF ANY LEGAL MEANS TO REMOVE THEM FROM THEIR HOME COUNTRY, E.G., WHERE RELATIONS ARE BROKEN ON SHORT NOTICE AND FSNS ARE FORCED TO REMAIN IN-COUNTRY WHEN THE AMERICAN STAFF DEPARTS. AS A PART OF THE BACKGROUND STUDY FOR SUCH LEGISLATION, THE DEPARTMENT WOULD ALSO WELCOME YOUR COMMENTS AS WELL AS THOSE OF YOUR STAFF, CONCERNING ITS CONTENT. THOSE COMMENTS SHOULD BE DIRECTED TO PER/FSN.

7. I REALIZE THAT THE DEPARTMENT IS UNABLE TO OFFER MUCH IMMEDIATE RELIEF, SAVE THAT MENTIONED IN PARAGRAPHS (3) AND (4) ABOVE, THE CONTINUING REVIEW OF YOUR SITUATION FOR SIV PURPOSES AND CONSIDERATION OF THE GENERAL LEGISLATION TO WHICH I HAVE REFERRED. I WISH TO EMPHASIZE THAT IT IS MY INTENTION AND THAT OF ALL THOSE WHO WILL BE INVOLVED IN ASSISTING YOU, THAT THE SITUATION OF THE FSN STAFF IN HONG KONG WILL BE CONTINUALLY MONITORED AND THEIR EFFORTS WILL BE REWARDED AT AN APPROPRIATE TIME.

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ACTION PER-07

INFO 100-00 ADS-00 INP-00 EAP-00 INSE-00 YO-00 INRE-00  
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R 110541Z JUL 83

FM AMCONSUL HONG KONG  
TO SECSTATE WASHDC 9611  
INFO AMEMBASSY BEIJING

UNCLAS HONG KONG 18873

DEPT. FOR H-U/S SELIN, EAP-A/S SOLOMON, CA-A/S CLARK  
FROM CONSUL GENERAL ANDERSONSTATE PLEASE PASS INX FOR COFOR, COEXM AND GENERAL  
COUNSEL

PASS FBIS OPERATIONS GROUP -- ATTENTION BAKER

E.O. 12356: W/A

TAGS: APER, AMGT, CVIS, HK

SUBJECT: 1997 AND FSM STAFF RETENTION

1. SINCE THE 1984 SIGNING OF THE SINO-U.K. JOINT DECLARATION PROVIDING FOR HONG KONG'S TRANSFER TO PRC SOVEREIGNTY IN 1997, DEEP ANXIETY HAS GRIPPED THE LOCAL CHINESE COMMUNITY. THE RECENT SUPPRESSION OF THE DEMOCRACY MOVEMENT IN BEIJING HAS DAMAGED THE CREDIBILITY OF PRC GUARANTEES TO PRESERVE HONG KONG'S OPEN SOCIETY AND CAPITALIST SYSTEM. EVEN BEFORE THE TIANANMEN MASSACRE, HONG KONG WAS ALREADY SUFFERING A SERIOUS "BRAIN DRAIN" -- EMIGRATION REACHED ABOUT 50,000 LAST YEAR, INCLUDING MANY PROFESSIONALS. THIS TREND IS NOW LIKELY TO ACCELERATE, FURTHER COMPLICATING THE STAFFING PROBLEMS OF LOCAL BUSINESSES.

2. OUR OWN FSM STAFF OF 240 HAS NOT BEEN IMMUNE TO THESE STRESSES. IN 1988, 13 APPLIED FOR SPECIAL IMMIGRANT VISA; THE HIGHEST FIGURE IN RECENT YEARS. ALREADY EIGHT SIV APPLICATIONS HAVE BEEN RECEIVED IN THE FIRST HALF OF THIS YEAR. INCREASINGLY, WE ARE SEEING EMPLOYEES APPLYING SHORTLY AFTER THEY REACH THE MINIMUM 15 YEARS' SERVICE. FBIS HAS BEEN PARTICULARLY HARD-HIT -- NINE OF ITS 41 FSM STAFF HAVE RESIGNED OR EMIGRATED IN THE PAST TWO YEARS, AND ITS RECRUITING EFFORT HAS BEEN SERIOUSLY HAMPERED. IN THE WAKE OF THE BEIJING CRACKDOWN WE HAVE RECEIVED PETITIONS FROM NUMEROUS FSM'S APPEALING FOR U.S. PASSPORTS. FSM'S MET WITH THE RECENT OIG INSPECTION TEAM, WHOSE FINAL REPORT INCLUDED A MAJOR RECOMMENDATION THAT THE CONSULATE AND WASHINGTON AGENCIES URGENTLY ADDRESS THEIR CONCERNS.

3. LIKE OTHER LOCAL CHINESE, THE VAST MAJORITY OF OUR STAFF WOULD PREFER TO REMAIN IN HONG KONG AS LONG AS THEIR LIFESTYLE HERE IS PRESERVED. AT THE SAME TIME, THEY WANT A GUARANTEE THAT THEY AND THEIR FAMILIES WILL BE ABLE TO EMIGRATE TO A THIRD COUNTRY IF CONDITIONS DETERIORATE. THUS THE QUEST FOR CANADIAN, AUSTRALIAN, U.S. AND OTHER COUNTRY PASSPORTS, THE SO-CALLED "INSURANCE POLICY" THAT WOULD ENABLE THEM TO CONTINUE LIVING HERE SECURELY.

4. EVERY MAJOR INSTITUTION IN HONG KONG, INCLUDING THIS CONSULATE, IS DEALING WITH THE SAME CHALLENGE: HOW TO ATTRACT AND RETAIN COMPETENT STAFF. TO BE SURE, PART OF THE PROBLEM IS ECONOMIC -- UNEMPLOYMENT

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IS VIRTUALLY NIL (U.S. PERCENT), CREATING A BIDDING WAR FOR WORKERS AT ALL LEVELS. BUT THE MOST DIFFICULT ASPECT OF THE PROBLEM IS TO RETAIN STAFF WHO ARE INTENT ON EMIGRATING BECAUSE OF POLITICAL UNCERTAINTIES. MANY COMPANIES ARE TRANSFERRING KEY STAFF TO OVERSEAS BRANCHES, ENABLING THEM TO GAIN FOREIGN CITIZENSHIP IN THE HOPE THAT THEY WILL EVENTUALLY RETURN TO HONG KONG. IN AN UNPRECEDENTED MOVE, THE FRENCH CONSULATE RECENTLY GRANTED PASSPORTS TO 30 KEY CHINESE OFFICERS IN FRENCH COMPANIES HERE, WAIVING THE RESIDENCY REQUIREMENT.

5. THUS FAR, OUR OWN ATTRITION RATE HAS NOT BEEN AS HIGH AS PRIVATE SECTOR FIRMS, MANY OF WHICH REPORT 25 TO 30 PERCENT TURNOVER OF TOP STAFF IN THE PAST YEAR. THE FACT THAT OUR FSM'S ARE ELIGIBLE TO APPLY FOR A SIV AFTER 15 YEARS CERTAINLY HAS CONTRIBUTED TO RELATIVELY GREATER STABILITY IN OUR STAFF. BUT IN THE NEXT EIGHT YEARS TO 1997, 48 PERCENT OF OUR TOTAL STAFF WILL BECOME ELIGIBLE TO APPLY FOR SIV'S, CREATING A POTENTIALLY SERIOUS DRAIN. MOREOVER, WITH ONLY EIGHT YEARS TO GO BEFORE HONG KONG'S TRANSFER TO PRC SOVEREIGNTY, THE CHANCE TO APPLY FOR AN SIV AFTER 15 YEARS SERVICE IS NO LONGER AN IMPORTANT FACTOR IN ATTRACTING AND RETAINING NEW STAFF.

6. IN A WORST CASE SCENARIO -- E.G. THE PRC SUDDENTLY RENOUNCING THE JOINT DECLARATION AND IMPOSING ITS SOCIALIST SYSTEM ON HONG KONG -- I AM SURE WE WOULD DO ALL WE COULD TO EVACUATE OUR FSM STAFF. I EMPHATICALLY DON'T BELIEVE SUCH A CATASTROPHE WILL HAPPEN. INDEED, DESPITE THE UGLY EVENTS OF MAY-JUNE IN BEIJING, I REMAIN CONVINCED THE PRC RECOGNIZES THAT PRESERVING HONG KONG IS VITALLY IMPORTANT TO ITS OWN INTERESTS AND IT WILL ACT PRUDENTLY.

## 7. WHAT TO DO

THUS THE MANAGEMENT PROBLEM IS HOW TO PROVIDE REASSURANCES THAT WILL INDUCE OUR FSM STAFF TO STAY HERE FOR THE LONG HAUL. IT GOES WITHOUT SAYING, THIS IS THE SAME FUNDAMENTAL CHALLENGE THE HONG KONG GOVERNMENT AND PRC MUST ADDRESS WITH ALL 5.6 MILLION PEOPLE IN THIS TERRITORY.

8. OUR FSM'S HAVE PROPOSED ONE REMEDY: TO PROVIDE THEM WITH U.S. PASSPORTS (SEE SEPTIL). ALTHOUGH I HOPE THE DEPARTMENT WILL CONSIDER THIS PROPOSAL, I APPRECIATE IT PRESENTS SOME MAJOR PRACTICAL DIFFICULTIES, SUCH AS U.S. CITIZENS ENCUMBERING FSM POSITIONS, AND THE NEED TO INTRODUCE SPECIAL LEGISLATION. I HAVE TOLD OUR FSM ASSOCIATION THAT THERE IS LITTLE HOPE FOR SUCH AN APPROACH.

9. MY OWN PREFERENCE WOULD BE TO CONCENTRATE ON ADMINISTRATIVE MEASURES WE COULD TAKE WITHOUT DOING VIOLENCE TO GLOBAL PERSONNEL POLICIES. I HAVE THE IMPRESSION THAT CURRENT LEGISLATION AND REGULATIONS DO CONTAIN AN ELEMENT OF DISCRETION WHICH I HOPE WE COULD APPLY.

## 10. SPECIFICALLY, I RECOMMEND THREE STEPS:

- A. PERMIT FSM'S HOLDING IMMIGRANT VISAS TO CONTINUE WORKING IN THE CONSULATE. I UNDERSTAND THIS WAS PERMITTED UNTIL A CLARIFICATION OF THE REGULATIONS WAS PROVIDED BY THE INS DISTRICT DIRECTOR A FEW YEARS AGO. OUR INS OFFICE HERE BELIEVES THERE IS ROOM FOR RETURNING TO THAT PRACTICE, IF

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- FOR EXAMPLE INS ISSUED RE-ENTRY PERMITS  
- TO SIV HOLDERS WHICH COULD BE RENEWED  
- EVERY TWO YEARS.

-- B. SERVING IN HONG KONG IN THIS UNIQUE PERIOD  
- OF UNCERTAINTY SHOULD BE CONSIDERED AS  
- "EXCEPTIONAL CIRCUMSTANCES", SUFFICIENT TO  
- WARRANT GRANTING OF AN SIV TO LONG-SERVING  
- FSN'S (SEE 9 FAM 42.25, NOTE 4.5).

-- C. CONSIDER GRANTING SIV TO FSN'S WITH LESS THAN  
- 15 YEARS SERVICE, IN SPECIAL CASES. IF THIS  
- OPTION WERE KEPT OPEN IN THE NEXT SEVEN TO  
- EIGHT YEARS, IT WOULD FACILITATE THE RETENTION  
- OF KEY STAFF.

11. IN HONG KONG, WE ARE FORTUNATE TO HAVE AN FSN  
STAFF WHOSE DEDICATION, LOYALTY AND PROFESSIONAL  
COMPETENCE ARE LEGENDARY IN THE FOREIGN SERVICE. WE  
OWE IT TO THEM, AS WELL AS TO THE U.S. GOVERNMENT, TO  
ADDRESS THEIR URGENT CONCERNS WITH SENSITIVITY AND  
CONCRETE ACTION. THIS IS ONE OF MY MOST IMPORTANT  
MISSION PRIORITIES, SINCE OUR FSN STAFF IS CLEARLY  
INDISPENSABLE TO THE ACHIEVEMENT OF OUR MANAGEMENT  
AND FOREIGN POLICY OBJECTIVES. I LOOK FORWARD TO  
RECEIVING STRONG SUPPORT FROM THE DEPARTMENT.

ANDERSON

NOTE BY OCT: NOT PASSED FBIE OPERATIONS GROUP BY OCT/T.

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DRAFTED BY: PER/FSN/PRS NORLEMEJAL  
APPROVED BY: M/DGPEG VESTCA/M NEWLIN  
CA/VO/LENS FISCHEL  
CA/VO/F/RAPEA KOENIGCA/VO/ V PENNER  
RE/EXFC ALLEGORNE  
PER/FSN/EC RUSHLER 072253Z NOV 85  
FM SECSTATE WASHDC  
TO AMEMBASSY ISLAMABAD

UNCLAS STATE 342874

FROM DIR GEN VEST

E.O. 12350 N/A  
TAGS: CVIS, APER, AFSH, AMOT, PR  
SUBJECT: SPECIAL IMMIGRANT STATUS FOR FSN EMPLOYEES

REF: ISLAMABAD 20822

1. I HAVE REVIEWED THE DEPARTMENT'S REQUIREMENT OF IMMEDIATE INTENT TO IMMIGRATE FOR THOSE HOLDING APPROVED SPECIAL IMMIGRATION STATUS ALONG WITH POST AND FSN CONCERNS.

2. THE INTENT TO IMMIGRATE IMMEDIATELY REQUIREMENT IS A LONGSTANDING POLICY AND A GOOD ONE. THE PROGRAM IS MEANT TO BE AN END OF SERVICE BENEFIT TO EMPLOYEES FOR LONG, LOYAL, HONEST, AND SUSTAINED HIGH LEVEL OF PERFORMANCE. WE THEREFORE REQUIRE CONFORMANCE TO THE IMMEDIATE INTENT TO IMMIGRATE RULE. AT THE SAME TIME, THE DEPARTMENT RECOGNIZE THAT THIS REQUIREMENT MAY NOT HAVE BEEN CLEARLY COMMUNICATE TO ALL POSTS BEFORE JULY 1985, AND THAT AS A RESULT, THERE MAY BE CIRCUMSTANCES BEYOND THE CONTROL OF THOSE BENEFICIARIES WHO RECEIVED SUCH STATUS PRIOR TO JULY 1985 WHICH WOULD IMPOSE UNUSUAL HANDSHIP IF THE INDIVIDUAL WERE TO RESIGN OR RETIRE TO IMMIGRATE IMMEDIATELY. IN THESE FEW CASES, IF THE VISA IS NOT ISSUED WITHIN ONE YEAR OF RECEIPT OF THIS CABLE, POST MAY SUBMIT SUCH A CASE TO THE DEPARTMENT (CA/VO) FOR AN OPINION, SETTING FORTH ALL THE RELEVANT

CIRCUMSTANCES. (SEE 22 CFR 42.26 NOTE 9.) OTHERWISE, THE DEPARTMENT ASSUMES THE PROCEDURES OUTLINED IN PARAGRAPH THREE WILL BE FOLLOWED.

3. IN ALL OTHER CASES APPROVED FOR SE-1 VISAS OVER A YEAR AGO WHERE THE BENEFICIARY IS NOT READY TO IMMIGRATE, EACH FILE MUST BE MARKED "ABANDONED" AND THE CASE MAY BE RESUBMITTED WHEN THE FSN IS READY TO IMMIGRATE. AN AFFECTED FSN SHOULD BE ADVISED THAT POST WILL RESUBMIT HIS/HER APPLICATION TO WASHINGTON PROVIDING NO DEROGATORY INFORMATION SURFACES IN THE INTERIM AND WILL INDICATE THAT THE CASE WHICH WAS INITIALLY APPROVED ON DATE IS BEING RESUBMITTED. FSN'S SHOULD BE TOLD THAT WITH ALL THE FOLLOWING FAVORABLE FACTORS THE PROBABILITY THAT THEY WILL REGAIN SE-1 STATUS IS HIGH:

- A. PREVIOUS SE-1 STATUS
- B. ADDITIONAL YEARS OF SERVICE
- C. PERFORMANCE REMAINED CONSISTENT
- D. NO DEROGATORY INFORMATION SINCE PRIOR APPROVAL

4. BECAUSE THE DEPARTMENT DOES NOT MAINTAIN RECORDS OF SPECIAL IMMIGRANT VISA APPROVALS FOR MORE THAN ONE YEAR, IT IS VITAL THAT AFFECTED FSN'S KEEP RECORDS OF THESE APPROVALS AND THAT THE POST RETAINS A COPY IN THE EMPLOYEE'S OFF. SHULTZ

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